

Jose L Mendoza (014551)  
 LAW OFFICE OF JOSE L. MENDOZA, L.L.C.  
 722 East Osborn Rd., Ste. 400  
 Phoenix, Arizona 85014  
 Telephone: (602) 264-7600  
 Facsimile: (602) 274-8585  
 josemendoza100@hotmail.com  
 Attorney for Defendant

**IN THE UNITED STATES DISTRICT COURT**  
**DISTRICT OF ARIZONA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Fredy Gutierrez-Valencia,

Defendant.

Case No. 22-CR-01032-PHX-JJT

DEFENDANT' SENTENCING  
 MEMORANDUM AND REQUEST  
 FOR VARIANCE/DEPARTURE

COMES NOW Defendant, by through undersigned counsel, and respectfully moves this Court to grant a 2 level variance in this case and sentence defendant at a level 13, to one year and one day. Given the facts and circumstances of this case a term of incarceration of one year and one day would be sufficient, but not greater than necessary, to comply with all the factors set forth under 18 U.S.C. Sec. 3553(a).

**A. The Need for the Sentence Imposed to reflect the Seriousness of the Offense.**

The defendant's conduct in this case involves defendant making false statements for the purpose of purchasing firearms from local gun dealers. Defendant would purchase several guns at a time and re-sell them. Defendant would sell the firearms online, at gun shows and most often to people he would meet at gun stores looking to purchase a firearm at the same time defendant was there viewing firearms himself for possible purchases. He would tell store patrons that he was in possession of other firearms that they may be interested in and possibly at a lower price. Defendant did this from approximately December 2020 until February 2022.

1 Defendant at one point was contacted by ATF and informed by ATF that if he intended to sell  
2 firearms that he would have to become a Federal Firearms Licensee. Defendant made a couple of  
3 attempts to obtain the FFL but had a difficult time with the process and ultimately gave up. In August  
4 of 2022 defendant was indicted after purchasing approximately 74.

5 Defendant recognizes that what he did was wrong and has accepted responsibility.  
6 Defendant is extremely remorseful and understands the wrongfulness of his actions. In speaking with  
7 defendant it is clear to Counsel that defendant is not only aware that what he did was wrong, but most  
8 important, he understands that what he did was wrong. Defendant understands and regrets his decision  
9 to get involved to no end.

10 Defendant comes before the Court for sentencing understanding that there is no excuse for his  
11 behavior. However, before the Court makes its determination, defendant would like to shed some light  
12 on his background and the incident so that the Court can adequately evaluate him as a person and make  
13 an informed decision on his life and punishment.

14 Defendant would like the Court to know that prior to his involvement in this matter he was a hard  
15 working law abiding citizen. Defendant had previously graduated from high school and earned a  
16 basketball scholarship at Phoenix College. He played at Phoenix College then went on to play at Grand  
17 Canyon University. A back injury ended his playing career but with the help of his coach the school  
18 continued to honor his scholarship. Defendant went on to graduate from Grand Canyon University and  
19 earned a bachelors degree in Sociology.

20 Defendant has continuously been employed. From 2009 through 2014 defendant was the  
21 manager for a juvenile group home. Helping young kids learn life skills so that they can transition from  
22 incarceration to becoming self sufficient hard working individuals. From 2014 to 2020 defendant was  
23 employed at Quail Run Mental Health Hospital as a behavioral health technician. Finally in 2021  
24 defendant was employed at St. Luke's Hospital once again as a behavioral health technician.

25 Now defendant is before this Court at the age of 49 for his first and only felony offense. When  
26 counsel sees cases such as this, and by this I mean a series of criminal activity all within a short period  
27 of time, there is always some triggering mechanism involved. For defendant that triggering mechanism

1 was the loss of his family and his life as he knew it. In 2019 defendant arrived home from a weekend  
2 trip to find out that his wife had emptied the family home, the family saving account, taken their children  
3 and asked for a divorce.

4 This was basically the beginning of defendant's downward spiral in life. Defendant found  
5 himself in a deep state of depression so much so that at times he considered ending it all. Defendant  
6 experimented with a number of drugs and at times found himself passed out. It was by coincidence  
7 during this time that defendant realized that he could purchase guns on sale and re-sell them for a profit.  
8 Defendant had lost his job at St. Luke's Hospital and thought this would be a way to make some money.

9 It's easy for people to say how could you allow yourself to end up like this. How could you do  
10 this to yourself. The reality is that at the end of the day not everyone is strong enough or mentally  
11 equipped to endure all the pressure that life throws your way. Even those that believe that they are  
12 strong enough sometimes find themselves down this dark depressing road. Defendant hit rock bottom,  
13 and it has led him right to prison.

14 Defendant is not offering excuses for his behavior, he just would like the Court to get a look at  
15 how he ended up in this position. The reality of the situation is that no one who has led a law abiding  
16 life, with a wife and kids, and a good job decides that at the age of 47 that they want to start doing drugs  
17 and go into a life of crime.

#### 18 19 **B. Defendant's Criminal History and Characteristics.**

20 Defendant is 49 years-old and has no prior felony convictions. Defendant's age and lack of  
21 criminal history favors a downward variance in this case. This was totally out of character for defendant.  
22 Defendant wants the Court to know that this is not the lifestyle that he lives. Getting involved in matters  
23 such as this was not the norm in his life. Looking back defendant cannot believe he let himself get  
24 involved in this incident.

#### 25 26 **C. The Need to Provide an Adequate Deterrence to Criminal Conduct**

27 Most people are firm believers that the punishment should fit the crime. But the punishment  
28

1 should also fit the person as well. There are a number of factors to take into consideration when  
2 formulating an adequate sentence. That is the logic behind the factors set forth under 18 U.S.C. Sec.  
3 3553(a). So that the punishment can fit the person and the crime. It is clear that there are some people  
4 that need a term of incarceration to impress upon them the wrongfulness of their actions and help deter  
5 them from future criminal activity. Then there are those that simply need monitored supervision and  
6 guidance to help them stay in the right direction and not deviate from their path.

7 For this 49 year-old defendant, who lives with his mother with no criminal history, a sentence  
8 to one year and one day is a just punishment, sufficient enough to reflect the seriousness of the offense,  
9 to promote respect for the law and deter further criminal conduct.

10  
11 **D. Conclusion**

12 The Pre-Sentence Report correctly calculated the defendant's total offense level and criminal  
13 history category I. In mitigation this appears to be completely out of character for defendant. The  
14 defendant has no prior criminal history. The defendant has a history of being gainfully employed. The  
15 defendant lives with his mother and stepfather. The defendant does have the support and structure of a  
16 caring family. This case does not involve any physical injuries.

17 For these reasons defendant respectfully request that this Court grant a variance and sentence  
18 defendant to a term of imprisonment for one year and one day followed by a term of supervised release.

19  
20 DATED this 3<sup>rd</sup> day of March 2023.

21  
22 s/ Jose L. Mendoza  
23 JOSE L. MENDOZA  
24 Attorney for Defendant  
25  
26  
27  
28

1 ORIGINAL of the foregoing  
2 transmitted by CM/ECF for filing  
3 this 3<sup>rd</sup> day of March 2023 to:

4 Clerk of the Court  
5 United States District Court  
6 District of Arizona

7 COPY of the foregoing transmitted/mailed  
8 this 3<sup>rd</sup> day of March 2023 to:

9 United States District Court  
10 District of Arizona

11 Sheila Phillips  
12 Assistant United State's Attorney  
13 United States Attorney's Office  
14 405 West Congress Street, Suite 4800  
15 Tucson, Arizona 85701

16 Rochelle Collins  
17 United States District Court  
18 Probation Office

19 s/ Jose L. Mendoza  
20 JOSE L. MENDOZA  
21 Attorney for Defendant  
22  
23  
24  
25  
26  
27  
28